



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 564

## IN THE MATTER OF GOLDMAN, SACHS & Co.

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Goldman, Sachs & Co. ("Goldman Sachs") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, '4(j).

On April 11, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Goldman Sachs had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded the inquiry and, on January 15, 1997, voted to find reasonable cause to believe that Goldman Sachs violated G.L. c. 268A, '3(a).

The Commission and Goldman Sachs now agree to the following facts and conclusions of law:

1. Goldman Sachs, a New York limited partnership, is an investment banking and securities firm with headquarters in New York City. According to the firm's 1995 *Annual Review*, Goldman Sachs' activities and sources of revenue include securities underwriting, sales and trading and asset management. Goldman Sachs conducts its business through five operating divisions: Investment Banking, Fixed Income, Equities, Currency and Commodities, and Asset Management. At the end of 1995, Goldman Sachs' assets totaled slightly over \$1 billion.

#### I. Steven Kaseta

2. During the relevant time, Steven Kaseta ("Kaseta") was a Massachusetts deputy treasurer. As deputy treasurer, Kaseta was responsible for overseeing the day-to-day administrative activities of the Massachusetts Teachers and Employees Retirement Systems Trust ("MASTERS Trust").<sup>1/</sup>

3. During the relevant time, Daniel J. McCarthy ("McCarthy") was employed as a vice president at Goldman Sachs' Boston Institutional Department, which functions within the Equities Division.

4. During the relevant time, Larry Kohn ("Kohn") was employed as a vice president with Goldman Sachs Asset Management ("GSAM"), a division of Goldman Sachs.

5. In May 1991, the Massachusetts Treasurer's Office issued a Request for Proposals ("RFP") for investment managers for \$595 million in the MASTERS Trust domestic equity pension funds. On May 23, 1991, GSAM submitted a proposal in response to the RFP. In August 1991, the Treasurer's office awarded GSAM a contract to manage \$100 million of these funds. This contract had an effective annual fee of \$400,000 to GSAM.

6. As deputy treasurer, Kaseta was a member of the selection committee which recommended to the Treasurer the award of the foregoing contract to GSAM. Furthermore, as a deputy treasurer, Kaseta was one of the officials responsible for evaluating Goldman Sachs' performance under the contract from the time the contract was awarded in August 1991 to September 1993.<sup>2/</sup> Finally, as a deputy treasurer, Kaseta was in

a position along with the Treasurer's other staff to recommend that the Treasurer award similar contracts in the future.

7. On two occasions between April 1991 and May 1993, McCarthy entertained Kaseta with meals and theater tickets where Kaseta's pro rata share was worth \$50 or more. On March 12, 1992, McCarthy provided Kaseta with two tickets to "Man of La Mancha" at the Colonial Theater in Boston, MA. On this same date, McCarthy also provided Kaseta and his guest with dinner at Locke-Ober Restaurant. The total cost of this March 12, 1992 entertainment for Kaseta and his guest was approximately \$130. On December 10, 1992, McCarthy provided Kaseta with drinks and dinner at the Post House Restaurant in New York City. Kaseta's pro rata share of the cost of this December 10, 1992 entertainment was approximately \$95.

8. Additionally, on December 5, 1991, and June 26, 1992, Kohn provided Kaseta with theater tickets for shows in New York City. The cost of these tickets was approximately \$290.

9. Goldman Sachs reimbursed McCarthy and Kohn or paid for all of the expenses they incurred in entertaining Kaseta. Goldman Sachs viewed the expenses as business expenses warranting reimbursement. In total, Goldman Sachs, through McCarthy and Kohn, provided Kaseta with items with a cost of approximately \$500.

10. Section 3(a) of G.L. c. 268A, prohibits anyone from, directly or indirectly, giving a state employee anything of substantial value for or because of any official act performed or to be performed by the state employee.

11. As a deputy state treasurer, Kaseta was a state employee.

12. Anything with a value of \$50 or more is of substantial value for '3 purposes.<sup>3/</sup>

13. The decisions and actions by Kaseta regarding the awarding and monitoring of contracts to manage MASTERS Trust assets were official acts performed or to be performed by him as a deputy treasurer.<sup>4/</sup>

14. As a business, Goldman Sachs acts through and is responsible for the conduct of its employees acting within the scope of their employment.<sup>5/</sup> Therefore, in that Goldman Sachs through McCarthy and Kohn provided Kaseta with free meals and tickets of substantial value for or because of official acts performed or to be performed by Kaseta, Goldman Sachs violated G.L. c. 268A, '3(a).

15. The Commission is aware of no evidence that any of the foregoing gifts were given to Kaseta with the intent to influence any specific official act by him as a deputy treasurer. The Commission is also aware of no evidence that Kaseta, in return for gifts, took any official action which would have affected Goldman Sachs. In other words, the Commission is aware of no evidence that there was any quid pro quo.<sup>6/</sup> The Commission is aware of no evidence that Goldman Sachs at any time acted in a manner inconsistent with the best interests of the MASTERS Trust when providing investment services. However, even if the conduct of Goldman Sachs' employees was only intended to create goodwill, it was still impermissible.

## II. Edward M. Murphy

16. From May 1989 to June 1995, Edward M. Murphy ("Murphy") was the executive director of the Massachusetts Health and Educational Finance Authority ("HEFA").<sup>7/</sup>

17. During the relevant time, Benjamin Wolfe ("Wolfe") was a Goldman Sachs vice president within the firm's Municipal Bond Department.<sup>8/</sup>

18. For a number of years, including the years in which Murphy served as HEFA executive director, Goldman Sachs has been a leading underwriter of bonds for non-profit institutions in Massachusetts. As an underwriter, Goldman Sachs would test the market for a bond, establish a price for the bond, and then agree to sell all or part of the bond issuance at that price.

19. During Murphy's tenure at HEFA, Wolfe was one of Goldman Sachs' senior investment bankers for non-profit institutions in Massachusetts.

20. Between 1989 and 1995, HEFA issued approximately \$6 to \$8 billion in new tax-exempt bonds. HEFA would normally receive the proceeds of the sale of the bonds, oversee the payment of the costs of the issuance, such as attorneys' and underwriters' fees, and remit the balance to the borrowing institution. HEFA would also monitor the borrowing institution's repayment to the bondholders.

21. Goldman Sachs was the lead underwriter for approximately 25 percent of all of the bonds issued by HEFA between 1989 and 1995.

22. As executive director, Murphy assigned the HEFA staff who would work with a borrowing institution in developing a bond proposal. Once the proposal was developed, it had to be presented to and approved by the HEFA Board of Directors. Murphy assigned who from the HEFA staff would make the presentation to the board pertaining to the bond. More generally, all agenda items for board meetings had to be approved by Murphy, otherwise, the items would not be placed on the agenda.

23. The HEFA board reserves the right not to enter into a bond transaction with a particular underwriter if it does not wish to do so.<sup>9/</sup>

24. Goldman Sachs' profits from HEFA bonds, referred to as its "take down," was \$8 per thousand during Murphy's early tenure, but later changed to \$5 per thousand. (The take down is based on the bond prices. For example, in a \$100 million dollar transaction, if Goldman Sachs' take down was \$6 per thousand, its fees would amount to approximately \$600,000.)

25. In addition to tax-exempt bond financing, HEFA also agrees to support "pools." A "pool" is typically a transaction where one or more borrowers finance more than one project or need by one umbrella bond issuance. During Murphy's tenure at HEFA, one such pool was entered into by HEFA with a hospital in 1991. That hospital was a Goldman Sachs client and was in the process of building a medical research facility. A pool was organized to make the management of funding easier. HEFA chose Goldman Sachs to manage the pool.

26. In 1991 or 1992, HEFA issued an RFP for a short-term investment manager for its bond proceeds. Goldman Sachs submitted a bid on the RFP. Goldman Sachs was not chosen. In 1994, HEFA was re-marketing a pool for a firm which went out of business. HEFA issued an RFP, on which Goldman Sachs put in a bid. Again, Goldman Sachs was not chosen.

27. As executive director, Murphy participated in each of the foregoing decisions regarding which firm would be HEFA's short-term investment manager and which firm would manage a given pool.

28. On the following three occasions Wolfe provided Murphy and his wife with entertainment where Murphy's pro rata share cost \$50 or more:

(a) a July 19, 1990 dinner at Cafe Budapest in Boston, attended by Murphy, Mrs. Murphy, Wolfe and Mrs. Wolfe. The total cost for the dinner was \$284.30; Murphy's pro rata share was \$142.16;

(b) a November 20, 1992 dinner at Le Bernadin Restaurant in New York City, NY, and theater tickets to "Phantom of the Opera," for Murphy, Mrs. Murphy, Wolfe and Mrs. Wolfe. The total cost was \$735; Murphy's pro rata share was \$367.50; and

(c) a October 23, 1993 dinner at Christopher's Restaurant in Phoenix, AZ, attended by Murphy, Mrs. Murphy, Wolfe and Mrs. Wolfe and two other couples. The total cost for the entertainment was \$482.86; Murphy's pro rata share was \$120.72.

29. Goldman Sachs reimbursed Wolfe for the above expenses incurred in entertaining Murphy. Goldman Sachs viewed the expenses as business expenses warranting reimbursement. In total, Goldman Sachs, through Wolfe, provided Murphy with items with a cost of approximately \$630.

30. As the HEFA executive director, Murphy was a state employee.

31. The decisions and actions by Murphy regarding what items would go on the board's agenda, which staff would be assigned to a bond proposal, the choice of a manager for a pool or a short-term investment manager for bond proceeds were official acts performed or to be performed.

32. As stated above, Goldman Sachs acts through and is responsible for the conduct of its employees acting within the scope of their employment. Therefore, Goldman Sachs violated '3(a) by through Wolfe providing Murphy with free meals and tickets, for or because of official acts performed or to be performed by Murphy as HEFA executive director.

33. The Commission is aware of no evidence that any of the foregoing gifts were given to Murphy with the intent to influence any specific official act by him as HEFA executive director. The Commission is also aware of no evidence that Murphy in return for gifts took any official action which would have affected Goldman Sachs. In other words, the Commission is aware of no evidence that there was any *quid pro quo*.<sup>10/</sup> The Commission is aware of no evidence that Goldman Sachs at any time acted in a manner inconsistent with the best interests of HEFA when providing underwriter services. However, even if the conduct of Goldman Sachs' employees was only intended to create goodwill, it was still impermissible.

34. Goldman Sachs fully cooperated with the Commission's investigation.

### Remedy

In view of the foregoing violations of G.L. c. 268A, '3(a), the Commission has determined that the public interest would be served by the disposition of this inquiry without further proceedings, on the basis of the following terms and conditions agreed to by Goldman Sachs:

(1) that Goldman Sachs pay to the Commission the sum of \$3,500 as a civil fine for violating G.L. c. 268A, '3(a);

(2) that Goldman Sachs waive all rights to contest the findings of fact, conclusions of law in terms and conditions contained in this agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

**DATE: June 19, 1997**

<sup>1/</sup> The MASTERS Trust is the combined investment fund for state employees and state teachers retirement annuities. G.L. c. 32, '23 establishes a non-paid Pension Investment Committee ("PIC") to oversee the MASTERS Trust. The day-to-day administrative activities of the trust are carried out by the Massachusetts Treasurer's Office. The MASTERS trust is a broadly diversified portfolio which stood at \$5.532 billion at the end of February 1991.

<sup>2/</sup> Kaseta resigned from the Treasurer's office in September 1993.

<sup>3/</sup> See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *EC-COI-93-14*.

<sup>4/</sup> "Official act" is defined as any decision or action in a particular matter or in the enactment of legislation.

<sup>5/</sup> See *John Hancock*, 1994 SEC 646; *Mass Medical Society*, 1995 SEC 751.

<sup>6/</sup> Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribery section of the conflict of interest law, G.L. c. 268A, '2. Section 2 is not applicable in this case, however, as there was no evidence of such *aquid pro quo* between the donors and Kaseta.

<sup>7/</sup> HEFA, an independent authority, was created by special legislation in 1968. Mass. St. 1968, c. 614. HEFA provides capital financing to public and non-profit institutions for higher education, non-profit hospitals, nursing homes, and their affiliates as well as non-profit research and cultural institutions and schools for the handicapped. This financing is accomplished primarily through HEFA issuing the tax exempt bonds. The monies raised are used for project acquisitions, construction, renovation, refinancing, and equipment financing.

<sup>8/</sup> Wolfe left Goldman Sachs in May 1995.

<sup>9/</sup> According to Murphy, this policy has never been applied.

<sup>10/</sup> As discussed in fn. 6 above, any such *quid pro quo* would raise c. 268A, '2 issues.